

EXHIBIT L

ORIGINAL

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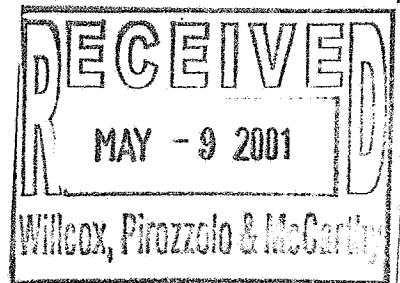
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X
LIBERTY MUTUAL INSURANCE :
COMPANY, :
Plaintiff :
vs. : CIVIL ACTION
NO. 96-10804-DPW
THE BLACK & DECKER :
CORPORATION, BLACK & DECKER, :
INC., BLACK & DECKER (U.S.), :
INC., EMHART CORPORATION, and :
EMHART INDUSTRIES, INC., :
Defendants :
-----X

DEPOSITION of ALAN D. SCHLEMMER,
taken on behalf of the Defendants, pursuant
to the Federal Rules of Civil Procedure, before
Corinne J. Turra, a Registered Professional
Reporter and Notary Public within and for the
Commonwealth of Massachusetts, at the offices
of Willcox, Pirozzolo & McCarthy, P.C.,
50 Federal Street, Boston, Massachusetts,
on Thursday, April 26, 2001, commencing at
10:12 a.m.

HENNESSEY CORP., D/B/A
ROBERT H. LANGE CO.
50 Congress Street
Boston, Massachusetts 02109
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1 Mississippi Hearing Loss Claim at the New Orleans
2 meetings?

3 A. Other than what I've just mentioned, I
4 can't recall anything else.

5 Q. Okay. You do recall that there was some
6 discussion regarding or, on the occasion of the
7 onset of the Mississippi Hand/Arm Vibration Claim?

8 MR. DUFFY: Objection to form. You
9 can answer.

10 A. My recollection is that about that time
11 frame, yes.

12 Q. And where did -- was this -- do you
13 remember a single discussion or was there more than
14 one discussion?

15 A. I recall a discussion.

16 Q. Where did the discussion take place?

17 A. My recollection is it took place at one
18 of the meetings at the Westin Canal Place Hotel
19 during one of the breaks.

20 Q. And who participated in that discussion?

21 A. I believe that the discussion occurred
22 between obviously myself and one of the attendees
23 who was there on behalf of ESIS and CIGNA, and at
24 the time also there were I believe representatives

1 from Black & Decker and from Miles & Stockbridge.

2 Q. Where specifically in the Westin Hotel
3 did this meeting take place?

4 A. It was in one of the conference ballroom
5 type rooms in the hotel.

6 Q. Were there any -- was it in the same room
7 that the quarterly defense strategy meeting was
8 being held?

9 A. Yes.

10 Q. Did it take place in some section of that
11 room?

12 A. I remember that it was during a break.
13 And I believe that we were all standing. And so
14 I'm thinking that we were probably somewhere in one
15 of the perimeter walls of the room just kind of
16 standing in a group.

17 Q. Apart from the people participating in
18 this discussion who you've just listed, did anyone
19 else, was anyone else in a position to hear what
20 was being said to your knowledge?

21 A. I don't think so.

22 Q. Now, who was the ESIS representative?

23 A. I believe the person at the time was
24 Malcolm Myers, but I'm not fully certain. It's

1 been quite a few years.

2 Q. Was there a CIGNA, a separate CIGNA
3 representative?

4 A. No.

5 Q. Was there any ESIS representative other
6 than Malcolm Myers?

7 A. Again, if Malcolm is correct to my
8 recollection, I don't believe that there was a
9 separate ESIS and a separate CIGNA representative.

10 Q. At that time did you have an
11 understanding as to what ESIS was?

12 A. Yes.

13 Q. What was your understanding?

14 A. My understanding is ESIS, which I believe
15 stands for Employers Self-Insurance Services, is a
16 third-party administrator operation that is owned
17 by or operated by what was then the CIGNA Insurance
18 Companies. And it provides self-insurance
19 services, claims-handling, those types of things,
20 on behalf of its customer clients.

21 Q. And did you understand, have any
22 understanding as to its relationship with Black &
23 Decker?

24 A. Yes.

1 Q. And what was that understanding?

2 A. My understanding is that Black & Decker
3 retained the services of ESIS to handle claims on
4 its behalf.

5 Q. At the time that Linda McCroddan invited
6 you to the Philadelphia meeting did you understand
7 that she had a relationship with ESIS?

8 A. I did.

9 Q. And did you have an understanding at that
10 time as to what ESIS was?

11 A. Yes.

12 Q. And what was that understanding?

13 A. It was the same as what I've just said.

14 Q. And did you have an understanding as to
15 ESIS' relationship to Black & Decker at that time?

16 A. I believe that Linda conveyed that
17 relationship.

18 Q. And what was that relationship that she
19 conveyed?

20 A. That ESIS was retained by Black & Decker
21 to provide claims-handling services to Black &
22 Decker.

23 Q. Did you understand that they were acting
24 on behalf of Black & Decker?

1 A. That was my understanding, yes.

2 Q. Who was the Black & Decker representative
3 or representatives at this conference, this meeting
4 during the recess at New Orleans?

5 A. My recollection is that I believe Clayton
6 Roop was there. I know that Clayton was, I think,
7 nearing retirement at this point, so it may be that
8 he had actually moved on. One of these meetings
9 tends to lead into another.

10 Q. Just so the record is clear, I'm asking
11 you -- you said there was a break at the general
12 New Orleans meeting, and a group was in a portion
13 of the room talking outside of the hearing of the
14 others. Do you have that meeting in mind?

15 MR. DUFFY: Objection to form.

16 A. Yes.

17 Q. Okay. Now, we're talking about that
18 particular meeting.

19 MR. DUFFY: Same objection.

20 Q. Was Clayton Roop at that meeting?

21 MR. DUFFY: Same objection.

22 A. Again, Jack, it's, you're asking me about
23 things that are almost 10 years ago now.

24 Q. I know.

1 A. And so I'm really trying to be as clear
2 as I can. I believe that it was Clayton who was
3 there. I do recall that there were representatives
4 of Black & Decker. My recollection is I think
5 Clayton was the individual that was there.

6 Q. Do you have a recollection of any other
7 Black & Decker representative there?

8 A. I do not.

9 Q. And you have a recollection there was a
10 Miles & Stockbridge representative?

11 A. I believe so.

12 Q. And who was that?

13 A. I believe that it was Rich Kidwell.
14 John Sweeney may have also been there. Because I
15 know about this point John was, I think, starting
16 to come into the picture. But that's my
17 recollection.

18 Q. Can you give us any idea as to the time
19 of this meeting? Time of the year. Let me
20 rephrase the question. Can you give us any idea as
21 to what time this meeting occurred?

22 A. I don't recall the specific time.

23 Q. I suppose the New Orleans weather won't
24 help us, but can you remember what the weather in

1 New Hampshire was at the time of this meeting?

2 MR. DUFFY: Objection to form. You
3 can answer. If you can.

4 A. One might humorously say it's always cold
5 in New Hampshire, but I don't recall.

6 Q. Do you remember what year this meeting
7 would have occurred?

8 A. I believe that it was probably around
9 '93, '94. Somewhere in that time frame.

10 Q. At some point in time you became aware of
11 the hand/arm vibration claim; is that right?

12 A. That's correct.

13 Q. Did you become aware of the hand/arm
14 vibration claim shortly after it was made?

15 MR. DUFFY: Objection to form.

16 A. Yes.

17 Q. In relation to that time, how long
18 following that time did this meeting occur?

19 A. It was right at the same time.

20 Q. Now, what did you say at this meeting?

21 A. My recollection is that the basic gist of
22 my conversation was that in light of the fact that
23 the hand/arm vibrations were the same plaintiffs,
24 the same attorneys, the same tools, the same plant

1 and the same time frames, we're going to treat
2 these in the same way we're treating the hearing
3 loss cases from a cost-sharing standpoint.

4 Q. And what did Clayton Roop say?

5 A. Leaving that discussion, my belief was
6 that everybody was in agreement that these were
7 essentially going to be handled in the same
8 manner.

9 Q. Not my question, though. What did
10 Clayton Roop say?

11 A. I don't recall specifically.

12 Q. Do you recall in any way any utterance he
13 made at that?

14 A. I do not.

15 Q. Do you recall at all any gesture he made
16 at that?

17 A. No.

18 Q. What did Rick Kidwell say?

19 A. I don't recall.

20 Q. Do you recall any gesture that Rick
21 Kidwell made?

22 A. I do not.

23 Q. Do you recall any utterance at all that
24 Rick Kidwell made?

1 A. I do not.

2 Q. What did John Sweeney say?

3 A. Again, assuming that John was there, I
4 don't recall.

5 Q. Would it be fair to say you don't recall
6 whether he was there; therefore, you certainly
7 don't recall what he said?

8 A. Well, as I testified to earlier, I
9 believe that the individuals there were the ones
10 that I've named. But it's quite possible that,
11 because of the dynamics of time, that the names and
12 faces may be alluding me a little bit.

13 Q. What did the ESIS representative say?

14 A. My recollection is that the ESIS
15 representative concurred with my assessment.

16 Q. What did the ESIS representative say to
17 concur?

18 A. I don't recall specifically.

19 Q. Do you recall in any way what words were
20 used by the ESIS representative?

21 A. I do not.

22 Q. Do you recall any gesture that the ESIS
23 representative made?

24 A. No.

1 Q. Do you recall any utterance at all that
2 the ESIS representative made?

3 A. Don't recall specifically.

4 Q. Is there anything that anyone said at
5 that meeting during the recess at New Orleans that
6 you can remember that you haven't told us?

7 A. As I've said, Jack, my recollection is
8 that from the conversation, my understanding
9 leaving that was that we were all in agreement as
10 to how the hand/arm vibration cases were going to
11 be handled under the cost-sharing agreement.

12 Q. If I can ask you to focus on my
13 question. Is there anything that you haven't told
14 us that anyone said at the meeting?

15 A. I can't recall anything further.

16 Q. Is there any other occasion on which you
17 spoke to anyone outside of Liberty Mutual regarding
18 cost-sharing on the Mississippi Hearing Loss Case?

19 A. Yes.

20 Q. And when was that?

21 A. I recall that sometime around the
22 mid-'90's I contacted Miles & Stockbridge to
23 inquire as to whether there were any further
24 defense bills forthcoming for the defense of the

1 Rick or someone in his office or in Miles &
2 Stockbridge's office at that time.

3 Q. When, can you tell us when, other than
4 generally in the mid-'90's, that that call
5 occurred?

6 A. I believe that it was probably around '94
7 or '95.

8 Q. And what did you say in the telephone
9 conversation?

10 A. My recollection is that I inquired as to
11 the current status of the litigation and any
12 additional defense bills that would be
13 forthcoming.

14 Q. And what did Mr. Kidwell say to you?

15 A. Well, again, I remember that I called to
16 Rick Kidwell's office. And the reason I remember
17 that, Jack, is for Miles & Stockbridge the only
18 phone number I had in my Rolodex is a phone number
19 for Richard Kidwell. I don't know whether it was
20 actually Richard that answered or whether it was
21 somebody who then directed me to someone else.

22 But my recollection is that at that
23 time the person who I spoke with was not aware of
24 any additional bills that were forthcoming and

1 thought that the bills had all been current, and
2 that was the extent of the call.

3 Q. Was this person that you spoke to, could
4 you tell whether this person you spoke to was male
5 or female?

6 A. I'm fairly certain it was a male.

7 Q. Could you tell us what this person said.

8 A. My understanding after the call from what
9 they said was that the bills were current and that
10 they were not aware of anything else that was
11 forthcoming at that point.

12 Q. That's not my question. Could you tell
13 what the person said, what words they used?

14 Withdrawn. Let me frame the
15 question properly.

16 Could you tell us what words the
17 person you spoke to used in talking with you on
18 that occasion?

19 A. I don't recall the specific words.

20 Q. Can you paraphrase the words that were
21 used?

22 A. Again, from the conversation my
23 understanding was that that was, that the bills
24 were current and that they were not aware of

1 anything else that we would be receiving. And
2 that's the extent of my recollection after the
3 call.

4 Q. Is it correct then that your answer is
5 you cannot paraphrase what the person said?

6 MR. DUFFY: Objection to form.

7 A. I'll rely on my earlier answer. I
8 believe I've done that.

9 Q. Now, you testified that there was a
10 series of discussions with Rick Kidwell; right?
11 You recall that?

12 A. Yes.

13 Q. When was the first of those discussions?

14 A. I believe that it was shortly after the
15 meeting in 1992.

16 Q. And did you call him or did he call you?

17 A. I don't recall who called whom.

18 Q. What did you say to Mr. Kidwell?

19 A. The discussion centered on the earliest
20 period of coverage for Black & Decker. There was a
21 period of time from '64 through '70 that we were
22 unable to establish the existence of coverage, and
23 I believe the call was to discuss that issue.

24 Q. Again, my question was what did you say.

1 whatever agreement is ultimately made.

2 Q. And then there is a phrase that appears
3 saying, "according to the percentages assigned to
4 each party." Do you see that phrase?

5 A. Yes.

6 Q. Were percentages assigned at the
7 meeting?

8 A. No.

9 Q. Are you referring to something that you
10 anticipated would happen in the future?

11 A. Yes.

12 Q. Now, if you go to Paragraph 24,
13 Paragraph 24 begins with the phrase, "At that
14 time." What time is referred to there?

15 A. That is referring to the time of the
16 discussions referred to in Paragraph 3. Not 3.
17 23.

18 Q. So does "at that time" mean at the time
19 of the meeting in Philadelphia?

20 A. I believe that to be correct.

21 Q. Okay. Further down in Paragraph 24 it
22 says, among other things, "After discussions were
23 had with Richard Kidwell of Miles & Stockbridge,
24 Black & Decker's counsel, it was ultimately agreed

1 that Liberty Mutual would fund 37.5 percent of the
2 incurred defense costs, and Black & Decker would
3 fund 33.5 percent." Do you see that sentence?

4 A. Yes.

5 Q. Okay. What discussions were referred to
6 there?

7 A. I believe those discussions are the phone
8 calls that I've testified to earlier.

9 Q. And on reading Paragraph 24, for that
10 matter looking at anything in the affidavit that
11 would help refresh your recollection, can you tell
12 us what Mr. Kidwell said in the discussions that
13 are referred to here?

14 A. Paragraph 24 states that discussions were
15 had with Richard Kidwell and that it was agreed
16 that Liberty would fund 37 and a half percent, and
17 Black & Decker 33 and a half percent of the defense
18 costs. I believe that's a fair description of the
19 discussions.

20 Q. All right. It says, "it was ultimately
21 agreed." Do you see?

22 A. I do see that.

23 Q. Do you agree with me that's the passive
24 voice?

1 A. Having to dig back to my days of
2 English 101, I think that's correct.

3 Q. Can you tell us what Mr. Kidwell said by
4 way of making an agreement?

5 A. Not specifically.

6 Q. What did you say by way of making an
7 agreement?

8 A. I don't recall specifically.

9 Q. And do you consider that by the time you
10 had had your second conversation with Mr. Kidwell,
11 however, you and he had made an agreement on the
12 percentages that are set forth in Paragraph 24?

13 A. As I stated earlier, I didn't recall the
14 exact number of phone conversations. We've talked
15 about potentially the two that you referred to.

16 At the end of whatever sequence of
17 telephone conversations and dialogue I had with
18 Mr. Kidwell and/or representatives of Black &
19 Decker, my belief was that Black & Decker and
20 Liberty had reached an agreement that Liberty would
21 fund 37 and a half percent of the incurred defense
22 costs and that Black & Decker would fund 33 and a
23 half percent of the defense costs.

24 Q. Okay. And those, whatever the exact

1 Q. Did you receive Exhibit F from
2 Ms. McCroddan?

3 A. I believe that I did, yes.

4 Q. Okay. What did you do with the document
5 entitled Interim Cost Sharing Agreement after you
6 received it?

7 A. I believe that ultimately would have been
8 placed in the claims file.

9 Q. Did you ever sign it?

10 A. I don't believe that I did.

11 Q. Why didn't you sign it?

12 A. Because at the time, as it indicates in
13 the letter, it was only a proposed cost-sharing
14 agreement. Therefore, no final agreement had been
15 reached at that point.

16 Q. And what did you do with the document
17 attached to Exhibit G, which is entitled Interim
18 Cost Sharing Agreement?

19 A. As indicated in Exhibit I, ultimately I
20 signed the agreement on November 3rd of 1992. This
21 is also outlined in the affidavit as Paragraph 27.

22 Q. Why did you wait three months before you
23 signed it?

24 A. I don't remember why I waited three

1 months.

2 Q. What did you do with the document after
3 you signed it?

4 A. As outlined in Paragraph 29, the original
5 structure that was proposed by Linda McCroddan at
6 ESIS on behalf of Black & Decker was that each
7 carrier would sign the agreement and then forward
8 the agreement on to the next carrier on the list.

9 My recollection is that I did
10 forward the agreement on to the next carrier on the
11 list. And I believe that that is also correct
12 because, as further outlined in Paragraph 29, the
13 cost-sharing agreement ultimately got held up at
14 the Home, meaning it clearly left Liberty and was
15 sent on to whomever was after us, whether that was
16 Home or one of the other carriers.

17 Q. Well, what made Home after you?

18 A. Because I had signed the agreement.
19 Therefore, I must have received the agreement in
20 order to send it on.

21 Q. You're just speculating? You don't
22 remember?

23 A. It's not correct. I do recall signing
24 and sending the agreement on.

1 Q. On to whom?

2 A. I don't recall which carrier was next on
3 the list.

4 Q. Okay. So you don't know to whom you sent
5 it?

6 A. I don't recall as I sit here today.

7 Q. Is there a transmittal letter anywhere?

8 A. I don't recall. There's not one
9 attached.

10 Q. Have you searched for a transmittal
11 letter?

12 A. To the extent we've produced documents in
13 this litigation and searched our records for all
14 relevant documents, yes, that search has been
15 completed.

16 Q. Have you located any transmittal letter?

17 A. As I sit here today, I don't recall
18 whether or not we did or did not.

19 Q. In the ordinary course of business did
20 you send documents out without a transmittal
21 letter?

22 A. You may or may not.

23 Q. That wasn't my question, though. Usually
24 did you send a transmittal letter with documents?

1 courtesy copy, it does state, "Enclosed you will
2 find the revised Interim Cost Sharing Agreement."

3 And I believe that this letter,
4 along with the letter of June 18th, 1993 wherein
5 bills are forwarded under the terms of the
6 cost-sharing agreement to myself, Jeanne Mathis,
7 Bob Pantano, and again with Rick Kidwell, Mike
8 Margiotta, Jean Montague all as recipients, and the
9 fact that we forwarded payment in accordance with
10 the request in the June 18th, 1993 letter and were
11 never advised that the payment was not correct or
12 improper is the reason why I believe that the
13 cost-sharing agreement had been reached.

14 Q. I'm afraid you're not answering my
15 question. Paragraph 30 says, "Nevertheless, the
16 parties had already previously agreed to the terms
17 of the cost-sharing agreement...." The word
18 "previously" appears in that phrase. When you did
19 this affidavit what was the time to which
20 "previous" referred?

21 MR. DUFFY: I'm going to object to
22 all of the prefix to that question. But you can
23 answer to the best you can. Because I think you
24 did answer.

1 A. I'm going to rely on my earlier
2 statement.

3 Q. I'm going to insist that you tell me,
4 what was "previous"? Withdrawn.

5 What was the time referred to as
6 "previous" in that phrase?

7 A. And again, Jack, I'm going to rely on the
8 answer I just gave you.

9 MR. PIROZZOLO: Can I have that
10 answer read.

11 (Answer read.)

12 Q. When do you say the cost-sharing
13 agreement had been reached, on what date?

14 MR. DUFFY: Answer if you can.

15 Q. Withdrawn. On what date do you say the
16 cost-sharing agreement had been reached?

17 MR. DUFFY: Objection to form. But
18 you can answer. If you can.

19 A. As I testified earlier to, by the point
20 of the letter from Linda McCroddan at ESIS of
21 August 5 of 1992 addressed to me specifically, I
22 believe this letter reflects that the agreement had
23 been reached.

24 Q. And had the agreement been reached in

1 oral communications?

2 A. I believe in part, yes.

3 Q. And who participated in the oral
4 communications?

5 A. With regard to Liberty, as I've testified
6 earlier, discussions between Rick Kidwell on behalf
7 of Black & Decker and myself. We reached an
8 agreement on the percentages Liberty Mutual would
9 share, and I believe Linda McCroddan at ESIS
10 coordinated similar type discussions with the other
11 carriers.

12 Q. With whom? I'm sorry.

13 A. With the other carriers.

14 Q. What did Rick Kidwell say to manifest his
15 agreement?

16 A. As I testified earlier, I believe that
17 the outcome of our discussions was the agreement
18 that I've outlined already.

19 Q. That not my question. What words did he
20 use to manifest his agreement?

21 A. I'll rely on my earlier testimony.

22 Q. Can you tell us what words Rick Kidwell
23 said which you say manifest his agreement?

24 MR. DUFFY: Objection to the form.

1 A. And, again, I'll rely on my earlier
2 testimony.

3 MR. PIROZZOLO: I'm going to insist
4 on an answer to that, Peter.

5 MR. DUFFY: You got your ---

6 MR. PIROZZOLO: Would you confer
7 with Mr. Schlemmer and ask him to answer that
8 question?

9 MR. DUFFY: I thought you already
10 had his answer to that question.

11 MR. PIROZZOLO: I do not have his
12 answer to that question.

13 MR. DUFFY: Actually, what is the
14 question, Jack?

15 MR. PIROZZOLO: He has just said
16 that an oral agreement was reached in conversation
17 between him and Mr. Kidwell. And I'm asking him
18 what Mr. Kidwell said to manifest that agreement.

19 And I think referring to some prior
20 testimony is not an answer. I'd like this witness
21 to tell me now what did Mr. Kidwell say to manifest
22 the agreement that Mr. Schlemmer says he made.

23 MR. DUFFY: Respectfully, Jack,
24 that's -- you've misstated his testimony.

1 MR. PIROZZOLO: Well ---

2 MR. DUFFY: And I believe he has
3 already answered that.

4 MR. PIROZZOLO: Then he can answer
5 it again.

6 MR. DUFFY: But you've misstated his
7 testimony.

8 Q. Here is the question, and I insist on an
9 answer: What words did Mr. Kidwell say, what words
10 did Mr. Kidwell use to manifest the agreement you
11 say he made before August 5th, 1992?

12 MR. DUFFY: Well, again, Jack, I
13 disagree with the predicate. But, Mr. Schlemmer,
14 you can answer it the best you can.

15 A. I don't recall the specific words.

16 Q. Can you paraphrase what Mr. Kidwell
17 said?

18 A. Not as I sit here today.

19 Q. Do you have any notes or memoranda or any
20 other thing that would assist you to remember what
21 Mr. Kidwell said?

22 A. Nothing that I recall as I sit here right
23 now.

24 Q. Did you speak with Mr. Kidwell between

1 July 9th and August 5th of 1992?

2 A. I don't recall specifically whether I did
3 or did not.

4 Q. Whatever it is that Mr. Kidwell said to
5 manifest what you say made an agreement, was that
6 said before or after August 9th, 1992?

7 MR. DUFFY: Again, I got to object
8 to that, Jack, but he can answer as best he can.

9 MR. PIROZZOLO: Did I misspeak? I'm
10 sorry.

11 MR. DUFFY: You consistently
12 misspeak with his testimony, Jack.

13 Q. Whatever you say that Mr. Kidwell said to
14 manifest an agreement, whatever that may have been,
15 was that said between -- before July 9, 1992?

16 MR. DUFFY: Jack, again you're
17 mismating the testimony. But he can answer the
18 best that he can.

19 A. As I already stated, I don't specifically
20 recall the dates of the conversations.

21 Q. Can you say whether it was before or
22 after July 9, 1992?

23 MR. DUFFY: Same objection.

24 A. Sitting here today, no, I can't.

1 related to both the hearing loss and hand/arm
2 vibration combined.

3 Q. I guess the problem I have, are you
4 saying Mississippi Hearing Loss or Arkansas Hearing
5 Loss?

6 A. Oh, I'm sorry. Mississippi.

7 Q. So your belief is that what is on the
8 page we're looking at relates to Mississippi
9 Hearing Loss and Mississippi Hand/Arm Vibration
10 which were combined in single bills?

11 A. That's my understanding, yes.

12 Q. If you go to, just so I can be clear, on
13 Page 16 of your affidavit there is a figure
14 \$155,754.17. Is that an amount that was paid ---

15 A. Oh, you mean Paragraph 16.

16 Q. Paragraph 16. Is that an amount that was
17 paid in the Arkansas Hearing Loss claim?

18 A. Oh, I'm sorry. You know what, you're
19 right. You made a very good point. I'm mixing the
20 two up.

21 Q. Mr. Schlemmer, if it will help move
22 things along, Paragraph 16 has a figure and
23 Paragraph --

24 A. 20.

1 Q. Did you attend the joint oversight
2 meetings after the case ended as to American
3 Pneumatic?

4 A. I don't recall whether I went to any more
5 after that or not.

6 Q. Would it be your best recollection that
7 you did not?

8 MR. DUFFY: Objection to form.

9 A. Sitting here today, I don't have a
10 recollection either way.

11 Q. Do you remember any reason why you would
12 have stopped attending those meetings once the case
13 settled as to American Pneumatic?

14 A. I don't have a recollection either way.

15 Q. I'd ask you to turn to Page 33.

16 MR. DUFFY: Do you mean 11, Jack?

17 MR. PIROZZOLO: Page 11, yes.

18 MR. DUFFY: Paragraph 33?

19 MR. PIROZZOLO: Yes. Did I say
20 Page 33?

21 MR. BINDER: Yes.

22 MR. PIROZZOLO: I misspoke. I'm
23 sorry.

24 Q. Paragraph 33, Page 11. That refers to

1 your contacting Richard Kidwell in late 1994 or
2 early 1995. Did you contact him by phone?

3 A. As I testified to earlier, my
4 recollection is in late '94 or early 1995 I made a
5 phone call to Miles & Stockbridge through the
6 number that I had for Richard Kidwell.

7 Q. And did you speak to Mr. Kidwell?

8 A. As I testified earlier, I don't remember
9 whether I actually spoke with Richard Kidwell or
10 whether they gave me somebody else other than
11 Mr. Kidwell.

12 Q. Well, if that's so, why did you say in
13 your affidavit that you contacted Richard Kidwell?

14 A. Because, as I testified earlier, when I
15 think of the contact, when I made this call, I went
16 and got the phone number for Miles & Stockbridge.
17 The only number I have or had at the time was
18 Richard Kidwell, the only number I had in my
19 Rolodex. So that's the number I called.

20 Q. Are you saying that someone answered the
21 phone, but you didn't know whether or not that was
22 Richard Kidwell or not?

23 A. I'm saying that I don't recall if, when I
24 ultimately got to speak to somebody on this issue,

1 I don't remember whether it was specifically
2 Richard Kidwell or if it was another attorney
3 speaking on behalf of Richard.

4 Q. In other words, you made a call and
5 someone answered the phone?

6 MR. DUFFY: Objection to form.

7 A. Yes.

8 MR. DUFFY: But you can answer.

9 Q. Is that right?

10 A. Yes, I believe someone would have
11 answered the phone.

12 MR. DUFFY: Jack, we went through
13 this a lot.

14 Q. And the person who answered the phone
15 said, this is Richard Kidwell, --

16 MR. DUFFY: Objection.

17 Q. -- but you don't know whether that was
18 Richard Kidwell or not?

19 MR. DUFFY: Objection to form. He's
20 testified to this earlier.

21 Q. Is that what you're saying?

22 MR. DUFFY: Objection.

23 A. No, Jack, that's not what I'm saying.

24 Q. Okay. Go back over it. It says in your

1 affidavit, "... I contacted Richard Kidwell...."
2 That was an affidavit you gave.

3 A. That's correct.

4 Q. And you knew it was important that it be
5 accurate?

6 A. That's correct.

7 Q. All right. So something led you to think
8 that you had talked with Richard Kidwell; is that
9 correct?

10 A. That's correct.

11 Q. What I'm trying to find out is did the
12 person you call say, I'm Richard Kidwell, or
13 answer, this is Kidwell here, or did he say, this
14 is Mr. Kidwell? Did something like that happen?

15 MR. DUFFY: Objection to form, but
16 you can answer.

17 A. As I've already testified, I don't recall
18 what the person at the other end actually said.
19 The reason I say I contacted Richard Kidwell is the
20 number I have for Miles & Stockbridge would have
21 been Richard Kidwell's. So I would have dialed,
22 calling up, expecting to get Richard Kidwell.

23 Sitting here today, I don't remember
24 if ultimately I spoke with Richard or if I spoke

1 with someone else other than Richard when I
2 ultimately got to Miles & Stockbridge.

3 Q. Forgive me, but Paragraph 33 says,
4 "Mr. Kidwell informed me that if there were any
5 more bills which needed to be paid, we would be so
6 informed;....," so on. You said in your affidavit
7 that Mr. Kidwell informed you of this.

8 A. Uh-huh.

9 Q. Are you saying that you put that in your
10 affidavit even though you didn't know whether it
11 was Mr. Kidwell you were talking to?

12 MR. DUFFY: Objection to form. You
13 can answer.

14 A. As I've stated, I drafted the affidavit
15 on December 4th of 1998. To the best of my
16 recollection, approximately late '94, early '95 I
17 made a phone call to Miles & Stockbridge, dialing
18 the number I have for Richard Kidwell. I believe
19 that the person I spoke to was likely to have been
20 Mr. Kidwell. But, sitting here today, I can't
21 recall if that's specifically who I talked to or if
22 I talked to someone on his behalf, another
23 attorney, a paralegal, whomever.

24 Q. Okay. And, again, I want to make sure

1 I've got this straight, because it's important.
2 You're not saying that someone answered the phone
3 and said, I'm Richard Kidwell, and you doubt that
4 was really Richard Kidwell?

5 MR. DUFFY: We covered this. Asked
6 and answered.

7 Q. Is that correct?

8 MR. DUFFY: But you can answer
9 again.

10 A. That's correct. I'm not questioning the
11 integrity of the person who answered the phone.

12 Q. Then, when you signed this affidavit, is
13 it so you didn't actually know who you had talked
14 to?

15 A. Jack, I signed this affidavit on
16 December 4th of 1998. It is now April, I think
17 26th, 28th, 2001. Three years have passed. I'm
18 looking at this and trying to recollect my
19 recollection of the events.

20 And I'm telling you that my contact
21 would have been Richard Kidwell because that's the
22 number I have to this day for Miles & Stockbridge.

23 And I believe that the person who
24 answered would have been either Richard Kidwell or

1 someone who was speaking either on behalf of or in
2 a capacity similar to that that Richard had at
3 Miles & Stockbridge.

4 Q. When you signed the affidavit on
5 December 4, 1998, this was closer to the time of
6 the call than it is now; is that correct?

7 A. Uh-huh. Right.

8 Q. And your memory then was clearer than it
9 would be today?

10 MR. DUFFY: Objection to form.

11 Q. Is that correct?

12 MR. DUFFY: Objection.

13 A. I believe that would be correct.

14 Q. So you had a better memory then of who
15 you spoke to than you do now?

16 MR. DUFFY: Same objection.

17 A. Correct.

18 Q. Is that correct? So is it fair to say
19 that when you signed the affidavit you had an
20 active memory that you spoke with Mr. Kidwell?

21 MR. DUFFY: Same objection.

22 A. I believe at the time I signed the
23 affidavit that I believed that the person I spoke
24 to was Richard Kidwell.

1 Q. Today you're not so sure?

2 MR. DUFFY: Objection to form. You
3 can answer.

4 A. I don't believe today I have any
5 different recollection.

6 Q. So today you continue to remember you
7 spoke to Richard Kidwell?

8 MR. DUFFY: Objection to form. You
9 can answer.

10 Q. Is that correct?

11 A. I don't have any -- as I said, I don't
12 have a specific recollection either way. I called
13 the number for Richard Kidwell. I believe I spoke
14 to him or someone in his capacity.

15 Q. So you're not saying that you doubt the
16 accuracy of Paragraph 33 as you sit here today?

17 MR. DUFFY: Same objection.

18 A. I don't doubt the accuracy, no.

19 Q. As far as you know, Paragraph 33 is
20 absolutely accurate?

21 MR. DUFFY: Same objection.

22 A. I believe it to be an accurate statement,
23 yes.

24 Q. You say you believe it to be an accurate

1 statement?

2 A. An accurate statement, yes.

3 Q. And I think you told me that you have not
4 seen Mr. Kidwell's affidavit?

5 A. I have not.

6 Q. Is that correct? Has anyone told you
7 what was in Mr. Kidwell's affidavit?

8 A. No.

9 Q. Has anyone given you any information
10 whatsoever about what Mr. Kidwell has said
11 regarding your affidavit?

12 A. No.

13 Q. No. So you have no reason to doubt your
14 recollection based on anything Mr. Kidwell is
15 saying?

16 A. No.

17 MR. PIROZZOLO: Let's just go off
18 the record.

19 (Discussion off the record.)

20 Q. (By Mr. Pirozzolo) Can I ask you
21 to turn to Paragraph 6. Paragraph 6 talks
22 about an exposure period. Do you see that line?
23 "... beginning with the alleged first 'exposure'
24 time period...." It's at the end.